

- 8.1 BellSouth and AT&T shall attempt, in good faith, to agree on a plan for discovery. Should they fail to agree, either BellSouth or AT&T may request a joint meeting or conference call with the Arbitrators. The Arbitrators shall resolve any disputes between BellSouth and AT&T, and such resolution with respect to the scope, manner, and timing of discovery shall be final and binding.
- 8.2 The Parties shall facilitate the arbitration by: (i) making available to one another and to the Arbitrators, on as expedited a basis as is practicable, for examination, deposition, inspection and extraction all documents, books, records and personnel under their control if determined by the Arbitrators to be relevant to the dispute; (ii) conducting arbitration hearings to the greatest extent possible on successive days; and (iii) observing strictly the time periods established by the CPR Rules or by the Arbitrators for submission of evidence or briefs.

9. **Resolution of Disputes Affecting Service**

9.1 **Purpose**

This Section 9 describes the procedures for an expedited resolution of disputes between BellSouth and AT&T arising under this Agreement which directly affect the ability of a Party to provide uninterrupted, high quality services to its customers at the time of the dispute and which cannot be resolved using the procedures for informal resolution of disputes contained in this attachment of the Agreement.

9.2 **Appointment and Removal of Arbitrator**

9.2.1 A sole Arbitrator will preside over each dispute submitted for arbitration under this Section 9.

9.2.2 The Parties shall appoint three (3) Arbitrators who will serve for the term of this Agreement, unless removed pursuant to Section 9.2.3 of this Attachment 1. The appointment and the order in which Arbitrators shall preside over Disputes Affecting Service will be made by mutual agreement in writing within thirty (30) days after the Effective Date.

9.2.3 The Parties may, by mutual written agreement, remove an Arbitrator at any time, and shall provide prompt written notice of removal to such Arbitrator.

9.2.4 In the event that an Arbitrator resigns, is removed pursuant to Section 9.2.3 of this Attachment 1, or becomes unable to discharge his or her duties, the Parties shall, by mutual written Agreement, appoint a replacement Arbitrator within thirty (30) days after such resignation, removal, or inability, unless a

different time period is mutually agreed upon in writing by the Parties. Any matters pending before the Arbitrator at the time he or she resigns, is removed, or becomes unable to discharge his or her duties, will be assigned to the Arbitrator whose name appears next in the alphabet.

**9.3 Initiation of Disputes Affecting Service Process.**

9.3.1 A proceeding for arbitration under this Section 9 will be commenced by a Party ("Complaining Party") after following the process provided for in Section 4 of this Attachment 1 by filing a complaint with the Arbitrator and simultaneously providing a copy to the other Party ("Complaint").

9.3.2 Each Complaint will concern only the claims relating to an act or failure to act (or series of related acts or failures to act) of a Party which affect the Complaining Party's ability to offer a specific service (or group of related services) to its customers.

9.3.3 A Complaint may be in letter or memorandum form and must specifically describe the action or inaction of a Party in dispute and identify with particularity how the complaining Party's service to its customers is affected.

**9.4 Response to Complaint**

A response to the Complaint must be filed within five (5) business days after service of the Complaint.

**9.5 Reply to Complaint**

A reply is permitted to be filed by the Complaining Party within three (3) business days of service of the response. The reply must be limited to those matters raised in the response.

**9.6 Discovery**

The Parties shall cooperate on discovery matters as provided in Section 8 of this Attachment 1, but following expedited procedures.

**9.7 Hearing**

9.7.1 The Arbitrator will schedule a hearing on the Complaint to take place within twenty (20) business days after service of the Complaint. However, if mutually agreed to by the Parties, a hearing may be waived and the decision of the Arbitrator will be based upon the papers filed by the Parties.

- 9.7.2 The hearing will be limited to four (4) days, with each Party allocated no more than two (2) days, including cross examination by the other Party, to present its evidence and arguments. For extraordinary reasons, including the need for extensive cross-examination, the Arbitrator may allocate more time for the hearing.

In order to focus the issues for purposes of the hearing, to present initial views concerning the issues, and to facilitate the presentation of evidence, the Arbitrator has the discretion to conduct a telephone prehearing conference at a mutually convenient time, but in no event later than three (3) days prior to any scheduled hearing.

Each Party may introduce evidence and call witnesses it has previously identified in its witness and exhibit lists. The witness and exhibit lists must be furnished to the other Party at least three (3) days prior to commencement of the hearing. The witness list will disclose the substance of each witness' expected testimony. The exhibit list will identify by name (author and recipient), date, title and any other identifying characteristics the exhibits to be used at the arbitration. Testimony from witnesses not listed on the witness list or exhibits not listed on the exhibit list may not be presented in the hearing.

- 9.7.3 The Parties will make reasonable efforts to stipulate to undisputed facts prior to the date of the hearing.
- 9.7.4 Witnesses will testify under oath and a complete transcript of the proceeding, together with all pleadings and exhibits, shall be maintained by the Arbitrator.
- 9.8 **Decision**
- 9.8.1 The Arbitrator will issue and serve his or her decision on the Parties within five (5) business days of the close of the hearing or receipt of the hearing transcript, whichever is later.
- 9.8.2 ✓ The Parties agree to take the actions necessary to implement the decision of the Arbitrator immediately upon receipt of the decision.

10. **Privileges**

- 10.1 Although conformity to certain legal rules of evidence may not be necessary in connection arbitrations initiated pursuant to this Attachment, the Arbitrators shall, in all cases, apply the attorney-client privilege and the work product immunity.
- 10.2 At no time, for any purposes, may a Party introduce into evidence or inform the Arbitrators of any statement or other action of a Party in connection with

enforcement of, an award, or unless otherwise required by an order or lawful process of a court or governmental body.

- 14.2 In order to maintain the privacy of all arbitration conferences and hearings, the Arbitrator(s) shall have the power to require the exclusion of any person, other than a Party, counsel thereto, or other essential persons.
- 14.3 To the extent that any information or materials disclosed in the course of an arbitration proceeding contains proprietary or confidential information of either Party, it shall be safeguarded in accordance with Section 18 of the General Terms and Conditions of the Agreement. However, nothing in Section 18 of the General Terms and Conditions of the Agreement shall be construed to prevent either Party from disclosing the other Party's Information to the Arbitrator in connection with or in anticipation of an arbitration proceeding. In addition, the Arbitrators may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information.

15. **Service of Process**

Except as provided in Section 9.3.1 of this Attachment 1, service may be made by submitting one copy of all pleadings and attachments and any other documents requiring service to each Party and one copy to the Arbitrator. Service shall be deemed made (i) upon receipt if delivered by hand; (ii) after three (3) business days if sent by first class U.S. mail; (iii) the next business day if sent by overnight courier service; or (iv) upon confirmed receipt if transmitted by facsimile. If service is by facsimile, a copy shall be sent the same day by hand delivery, first class U.S. mail, or overnight courier service.

- 15.1 Service by AT&T to BellSouth and by BellSouth to AT&T at the address designated for delivery of notices in this Agreement shall be deemed to be service to BellSouth or AT&T, respectfully.

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re:

Petition for Arbitration of the Interconnection  
Agreement Between BellSouth Telecommunications,  
Inc. and Supra Telecommunications and Information  
Systems, Inc., Pursuant to Section 252(b) of the  
Telecommunications Act of 1996.

) Docket No. \_\_\_\_\_  
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Filed: September 1, 2000

**PETITION OF BELL SOUTH TELECOMMUNICATIONS, INC.  
FOR SECTION 252(b) ARBITRATION**

Pursuant to Section 252(b) of the Telecommunications Act of 1996 ("1996 Act"), BellSouth Telecommunications, Inc., ("BellSouth") files this Petition for Arbitration seeking resolution of certain issues arising between Supra Telecommunications and Information Systems, Inc. ("Supra") and BellSouth in the negotiation of an Interconnection Agreement. BellSouth states as follows:

**I. STATEMENT OF FACTS**

1. BellSouth is a corporation organized and existing under the laws of the State of Georgia, maintaining its principal place of business at 675 West Peachtree Street, N.E., Atlanta, Fulton County, Georgia. BellSouth is an incumbent local exchange carrier ("ILEC") as defined by 47 U.S.C. § 251(h).

2. Supra is a corporation organized and existing under the laws of the State of Florida, maintaining its principal place of business in Miami, Florida. Upon BellSouth's best knowledge and belief, Supra is certified by the Florida Public Service Commission ("Commission") to provide Alternative Local Exchange Carrier ("ALEC") services.



3. Pursuant to the 1996 Act, BellSouth is required to provide (through negotiation or otherwise) interconnection for the equipment and facilities of a requesting telecommunications carrier with its network. *See* 47 U.S.C. § 251(c)(2). The terms of interconnection must comply with the provisions of Section 251(b) of the 1996 Act. BellSouth, as an ILEC, is also required to provide interconnection in compliance with the provisions of Section 251(c) of the 1996 Act.

4. Under the provisions of Section 252(d), BellSouth must provide interconnection and network elements at rates that are cost based and non-discriminatory. The rates BellSouth charges may include a reasonable profit.

5. On or about October 5, 1999, Supra adopted a pre-existing Interconnection Agreement between BellSouth and AT&T (the BellSouth/Supra Interconnection Agreement), which this Commission subsequently approved. The Agreement expired on June 9, 2000. The parties have agreed to continue to operate pursuant to its terms until such time as a new Interconnection Agreement is approved. The new Interconnection Agreement will be retroactive to June 9, 2000.

6. In anticipation of the expiration of the Agreement and pursuant to the terms of the BellSouth/Supra Interconnection Agreement, BellSouth provided to Supra by letter dated March 29, 2000, a request for negotiation of a new Interconnection Agreement. Attached to this request was a copy of the proposed BellSouth agreement from which the parties would commence negotiations. Accordingly, the negotiations were deemed to have commenced on March 29, 2000.

7. Pursuant to its obligations under Section 251(c)(1) of the 1996 Act, BellSouth has attempted to negotiate the terms and conditions of a new Interconnection Agreement with Supra.

Supra and BellSouth, however, have been unable to resolve through negotiations all of the issues arising between them pertinent to the re-negotiation of their Interconnection Agreement.

## II. JURISDICTION OF THE COMMISSION

8. Pursuant to Section 252(b)(1) of the 1996 Act, which allows either party to the negotiation to request arbitration, this Commission is empowered to arbitrate any and all unresolved issues regarding Supra's interconnection with BellSouth's network. BellSouth's Petition is filed with the Commission between the 135<sup>th</sup> and 160<sup>th</sup> day from the date that negotiations were deemed to have commenced.

9. The Federal Communications Commission ("FCC") established the appropriate standard for arbitration under Sections 251 and 252 of the 1996 Act in its First Report and Order, Implementation of the Local Competition provisions of the Telecommunications Act of 1996, CC Docket No.: 96-98. Pursuant to the FCC's First Report and Order, this Commission must do the following in an arbitration:

- a. ensure resolution and conditions satisfying Section 251, including regulations promulgated by the FCC; and
- b. establish rates for interconnection services or network elements according to Section 252(d).

## III. ARBITRATION ISSUES AND POSITIONS OF THE PARTIES

10. Pursuant to Section 252(b)(2) of the 1996 Act, the unresolved issues between Supra and BellSouth, which BellSouth believes have been properly raised by the parties, are set forth below. Attached to this petition as Exhibit 1 is BellSouth's proposed Interconnection

Agreement with Supra. Immediately preceding the Statement of each issue is a citation to the portion of the proposed Agreement that the issue addresses.<sup>1</sup>

Issue 1: (General Terms and Conditions ("GTC") § 16). Should the Parties be required to submit disputes under this Agreement to an Alternative Dispute Resolution Process (Commercial Arbitration)?

BELLSOUTH: No. BellSouth believes the Florida Public Service Commission, having knowledge of the issues and obligations of the parties under applicable law, is in the best position to resolve contract disputes. ADR is strictly voluntary, and parties cannot be forced to participate in commercial arbitration without their consent.

SUPRA: Supra believes BellSouth should be required to submit to Alternative Dispute Resolution.

Issue 2: (GTC § 18.4). What is the scope of the ability to use the other party's Confidential Information that is obtained pursuant to this Interconnection Agreement?

BELLSOUTH: Confidential Information provided under this Agreement should be utilized only in connection with this Agreement. To the extent the same or similar Confidential Information is to be exchanged under a separate agreement, that separate agreement will control.

SUPRA: To the best of BellSouth's understanding, Supra wants to retain Confidential Information provided by BellSouth under this Interconnection Agreement for use in connection with other agreements between the Parties.

Issue 3: (GTC § 21.1). What is the appropriate amount of general liability insurance coverage for the Parties to maintain under their Interconnection Agreement?

BELLSOUTH: \$10,000,000 is an appropriate level of coverage given the value of BellSouth's and other ALECs' network equipment and facilities, both inside and outside the central offices. In the event that any error on the part of an ALEC or BellSouth damages equipment or other property of other

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<sup>1</sup> In some cases in which an issue has been raised by Supra, the issue is not reflected in the proposed Agreement because Supra has not proposed any contract language to BellSouth.



carriers, the loss could be substantial. Other ALECs have agreed to this level of coverage.

**SUPRA:** \$10,000,000 is too much coverage to expect ALECs to carry.

**Issue 4:** (GTC 24, § 15.1). Should this Interconnection Agreement be filed with the Florida Public Service Commission for approval prior to the ALEC's receiving ALEC certification from the Florida Public Service Commission?

**BELLSOUTH:** No. The Florida Public Service Commission has agreed with BellSouth that "BellSouth's caution in deciding to hold filings for non-certificated entities until they obtain certification is appropriate." (Letter dated April 25, 2000, from Walter O'Haeseleer, Director, Division of Telecommunications, to Nancy Sims of BellSouth) Language requiring certification prior to filing of the Agreement is appropriate given that any ALEC, whether or not certified, may adopt this Agreement.

**SUPRA:** Supra does not want to be required to be certificated as an ALEC for the Interconnection Agreement to be enforceable except to the extent Supra seeks to provide services for payment. BellSouth is unsure why Supra holds this position as Supra is a certified ALEC in Florida.

**Issue 5:** (Attachment 1, § 3.15). Should BellSouth be required to provide to Supra a download of all BellSouth's Customer Service Records ("CSRs")?

**BELLSOUTH:** No. BellSouth provides access to CSR information via its electronic interfaces, provided that the ALEC has submitted a blanket letter of authorization stating that it will view only those CSRs for which the customer has consented to allow the ALEC access. Providing Supra with a download of all CSRs, without authorization from each and every customer, would constitute a violation of Section 222 of the Act.

**SUPRA:** Yes. Supra believes that such a download is not a violation of the Customer Proprietary Network Information requirements of the Act, and claims that a download of all CSRs is necessary to allow Supra to place orders in a timely manner.

Issue 6: (Att. 1, § 3.15). Should BellSouth be required to provide to Supra a download of BellSouth's Regional Street Address Guide ("RSAG") Database?

BELLSOUTH: No. BellSouth provides access to RSAG data via its electronic interfaces. Hundreds of ALECs successfully utilize BellSouth's existing process to access RSAG. Thus, BellSouth is meeting its obligations under the Act. Notwithstanding the foregoing, BellSouth is willing to negotiate a license agreement outside of this Interconnection Agreement containing rates, terms and conditions for such a download.

SUPRA: Yes. Supra believes a download of RSAG is necessary to allow Supra to populate its orders in a timely manner.

Issue 7: (Att. 1, § 3.21 & Att. 5, § 2.5). Should Supra be required to pay the end user line charge associated with implementation of local number portability as authorized by the Federal Communications Commission.

BELLSOUTH: Yes. This charge is necessary where BellSouth provides switching (as an unbundled network element, in the UNE platform combination or in connection with resold service) to recover the costs of implementing local number portability. Recovery of such charges is expressly permitted under 47 C.F.R. § 52.33.

SUPRA: No. Supra disagrees that the Federal Communications Commission has authorized any such charges for recovery of costs for local number portability implementation.

Issue 8: (Att. 1, § 3.25). Should Supra, as a reseller of BellSouth's services, be required to pay to BellSouth, pursuant to 47 C.F.R. § 51.617, end user common line charges identical to those BellSouth assesses its retail end users?

BELLSOUTH: Yes. 47 C.F.R. § 51.617(a) clearly states that ILECs shall assess the end user common line charge upon resellers.

SUPRA: No. Supra does not believe the end user common line charge should be assessed against resellers.

Issue 9: (Att. 1, § 2.1). What should be the definition of "ALEC"?

**BELLSOUTH:** Consistent with § 364.02, Florida Statutes, "ALEC" should be defined as a telephone company certified by the Public Service Commission to provide local exchange services in the state of Florida after July 1, 1995.

**SUPRA:** Supra does not want the definition of "ALEC" to include Commission certification. Supra wants to be able to operate under the Interconnection Agreement without certification.

**Issue 10:** Should the rate for a loop be reduced when the loop utilizes Digitally Added Main Line (DAML) equipment?

**BELLSOUTH:** No. BellSouth utilizes DAML equipment on a very limited basis to expand a single loop to derive two digital channels, each of which may be used to provide voice grade service. BellSouth's deployment of DAML is limited to those situations where loop facilities are not currently available for the second voice grade loop. It is a temporary solution for provision of service pending installation of facilities. The use of DAML equipment is a means to meet in a timely manner a request for service. It is not a more economic means of meeting demand on a broad basis than using individual loop pairs. For example, for loops served via Digital Loop Carrier (DLC) equipment, DAML equipment must be placed both at the DLC Remote Terminal and the customer's premises. Further, from the DLC Remote Terminal to the BellSouth central office, two channels at DS-0 (one for each of the loops derived via DAML equipment) must still be provisioned. Supra believes that loops utilizing DAML equipment should be offered at a lower cost than other loops. However, costs for unbundled loops have been calculated in compliance with Federal Communications Commission rules on a forward-looking basis without regard to the manner in which the customer is served (e.g., copper or digital loop carrier).

**SUPRA:** Supra believes that if a single loop is modified through DAML equipment to serve two customer locations, and Supra only serves one of those locations, Supra should only pay a portion of the loop cost.

Issue 11:

Should the Interconnection Agreement state that the parties may withhold payment of undisputed charges to the extent that these charges are equal to or less than disputed charges?

BELLSOUTH: No. The Interconnection Agreement contains in Attachment 6 provisions to handle billing disputes between the parties. Allowing one party to withhold payment of appropriately billed charges when other charges, whether appropriately or inappropriately billed, are in dispute, would allow parties to "game" the billing system to avoid paying bills.

SUPRA: Yes. Supra believes that it is appropriate for the Interconnection Agreement allow this withholding of payments.

Issue 12:

Should BellSouth be required to provide transport to Supra across LATA boundaries?

BELLSOUTH: No. BellSouth is prohibited by law from providing services across LATA boundaries. In addition, BellSouth's obligations under Section 251 and 252 of the Act relate to local interconnection and provision of services to allow ALECs to compete in the local exchange market. Supra's request is clearly beyond the scope of the Act.

SUPRA: Yes. BellSouth's restrictions against providing services across LATA boundaries should not prevent Supra from providing such services utilizing BellSouth's facilities.

Issue 13:

(Att. 3, § 5.3.1.1). What should be the appropriate definition of "local traffic" for purposes of the parties' reciprocal compensation obligations under Section 251(b)(5) of the 1996 Act?

BELLSOUTH: "Local traffic" should be defined to apply only to traffic that originates and terminates within a local area. The definition should expressly exclude traffic to Internet Service Providers, which is interstate traffic.

SUPRA: The definition of "local traffic" should include interstate traffic, including calls to Internet Service Providers.

Issue 14: Should BellSouth pay reciprocal compensation to Supra where Supra is utilizing BellSouth's unbundled switching for the termination of local traffic to Supra's end users?

BELLSOUTH: No. The purpose of reciprocal compensation is to recover the costs incurred by the terminating carrier for utilizing its network. Since BellSouth does not charge Supra the end office switching rates when a BellSouth customer places a local call to a Supra customer, and Supra does not have its own network, Supra incurs no cost in terminating the call. Thus, reciprocal compensation is not appropriate.

SUPRA: Yes. Reciprocal Compensation should be paid to Supra regardless of whether it incurs any costs in terminating Local Traffic.

Issue 15: (Att. 9). What Performance Measurements should be included in Attachment 9 of the Interconnection Agreement?

BELLSOUTH: The Service Performance Measurements and Enforcement Mechanisms proposed by BellSouth should be adopted. BellSouth has provided extensive service quality measurements pursuant to which Supra can confirm parity between BellSouth and other ALECs. BellSouth's proposal includes voluntary enforcement mechanisms, which would become effective after BellSouth receives 271 authority.


SUPRA: Supra has not provided a proposal for performance measurements. However, Supra has stated that it wants specific intervals for certain services rather than intervals at parity. Supra has not identified the desired intervals and the services to which such intervals should apply.

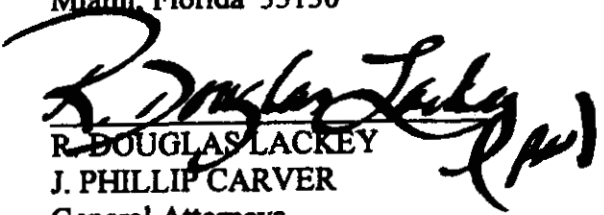
11. Although, as set forth above, BellSouth initiated negotiations on March 29, 2000, Supra did not respond to BellSouth's requests to negotiate for an extended period of time. When the parties did meet, the short time frame remaining before the deadline for filing this Petition was such that the parties' meetings were limited. Further, in these meetings, Supra committed to

provide both a list of issues and its proposed contractual language. As of this date, Supra has not provided this information. Thus, BellSouth's ability to frame the totality of the pertinent issues is limited. Nevertheless, BellSouth has attempted herein to raise the issues to the best of its understanding.

WHEREFORE, BellSouth respectfully requests that the Commission arbitrate the issues set forth in this Petition and enter an Order directing that BellSouth's position on each of the issues raised herein be incorporated into the Interconnection Agreement between Supra and BellSouth.

Respectfully submitted this 1st day of September, 2000.

  
NANCY B. WHITE  
Museum Tower  
150 West Flagler Street  
Suite 1910  
Miami, Florida 33130

  
R. DOUGLAS LACKEY  
J. PHILLIP CARVER  
General Attorneys  
Suite 4300, BellSouth Center  
675 West Peachtree Street, N.E.  
Atlanta, GA 30375  
(404) 335-0765

COUNSEL FOR BELL SOUTH  
TELECOMMUNICATIONS, INC.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

<p>SUPRA TELECOMMUNICATION &amp; INFORMATION SYSTEMS, INC., a Florida corporation,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>BELLSOUTH-TELECOMMUNICATIONS, - INC., a Georgia corporation, and THE COMMISSIONERS OF THE FLORIDA PUBLIC SERVICE COMMISSION, in their official capacities,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil Action No. _____</p>  <p>Judge: _____</p>
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**EXHIBIT "B" TO VERIFIED COMPLAINT FOR  
DECLARATORY, INJUNCTIVE AND OTHER RELIEF**

COPY

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

Petition for Arbitration of the )  
Interconnection Agreement between Bell- )  
South Telecommunications, Inc. and )  
Supra Telecommunications & Information )  
Systems, Inc. pursuant to Section 252(b) )  
of the Telecommunications Act of 1996 )

Docket No. 00-1305-TP

Dated: October 16, 2000

**SUPRA TELECOM'S RESPONSE TO  
BELLSOUTH'S PETITION FOR ARBITRATION**

**RESPONDENT SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEM'S  
INC. ("Supra Telecom"),** by and through its undersigned counsel, hereby serves this its response  
to **BELLSOUTH TELECOMMUNICATIONS, INC.'s ("BellSouth")** petition for arbitration,  
together with Supra Telecom's additional issues for arbitration, and in support thereof states as  
follows:

**ANSWER TO PETITION**

1. Supra Telecom admits the allegations of paragraph 1 in BellSouth's petition.
2. Supra Telecom admits the allegations of paragraph 2 in BellSouth's petition.
3. Supra Telecom admits the allegations of paragraph 3 in BellSouth's petition.
4. Supra Telecom admits the allegations of paragraph 4 in BellSouth's petition; but  
only to the extent allowed by 47 U.S.C. § 252(d) and the FCC's orders and rules implementing  
that section; otherwise Supra Telecom denies the allegations and demands strict proof thereof.
5. Supra Telecom admits the allegations of paragraph 5 in BellSouth's petition with  
the exception of the last sentence and states that the retroactivity of any new Interconnection  
Agreement shall be governed by either the current Interconnection Agreement or the new  
Agreement eventually entered into.

PLAINTIFF'S  
EXHIBIT

D

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FSS RECORDS/REPORTING



6. Supra Telecom admits the allegations of paragraph 6 in BellSouth's petition to the extent that BellSouth sent Supra Telecom a letter dated March 29, 2000; however Supra Telecom denies the balance of the allegations. Supra Telecom also states that pursuant to 47 U.S.C. § 252(b)(1), the arbitration period begins to run from the day the ALEC first requests for negotiation of an agreement. In this instance, because of a misunderstanding between the parties, Supra Telecom did not formally request to renegotiate a new interconnection agreement until June 9, 2000, the day after BellSouth indicated that it was not extending the current agreement. Accordingly, the window to request arbitration does not begin until October 23, 2000. BellSouth has failed to negotiate in good faith by failing to allow the time period for negotiation set forth in 47 U.S.C. § 252(b)(1). Because of this shortened time period, the parties have not been able to fully identify the issues for arbitration existing between the parties.

7. Supra Telecom admits the allegations of paragraph 7 in BellSouth's petition to the extent that the parties have made some attempt to negotiate the terms and conditions of a new Interconnection Agreement; however, Supra Telecom states that BellSouth has filed this petition prematurely and thus the parties have not been able to fully renegotiate a new Interconnection Agreement in good faith.

8. With respect to the allegations in paragraph 8, Supra Telecom admits that this Commission is empowered to arbitrate any and all unresolved issues regarding a new Interconnection Agreement. However, Supra Telecom denies that this petition was filed between the 135th and 160th day from the date negotiations began.

9. Supra Telecom admits the allegations of paragraph 9 in BellSouth's petition, with

the caveat that subsequent FCC orders regarding these issues also govern this proceeding.

10. With respect to the allegations set forth in paragraph 10 of BellSouth's petition, Supra Telecom admits that these are some of the unresolved issues between the parties. Supra Telecom however denies that these are all of the issues between the parties. Moreover, Supra Telecom states that BellSouth has acted in bad faith in these negotiations by presenting its standard agreement and not allowing a sufficient opportunity to identify and negotiate issues; rather than negotiate from the current Interconnection Agreement between the parties, which both Supra Telecom and BellSouth are far more familiar with. A copy of the parties' current Interconnection Agreement is already on file with this Commission. In this regard, Supra Telecom states that BellSouth refused to negotiate from the current agreement in order for negotiations to take much longer. With respect to the particular issues between the parties, Supra Telecom responds to the issues identified by BellSouth by modifying the same as follows:

**Issue 1: Should the parties be required to submit disputes under this Agreement to an Alternative Dispute Resolution Process (Commercial Arbitration) or alternatively should the parties be allowed to resolve disputes before any Court of competent jurisdiction and should at least mandatory mediation (informal dispute resolution) be required prior to bringing a petition?**

**BELLSOUTH:** No. BellSouth believes the Florida Public Service Commission, having knowledge of the issues and obligations of the parties under applicable law, is in the best position to resolve contract disputes. ADR is strictly voluntary, and parties cannot be forced to participate in commercial arbitration without their consent. With respect to litigation before any Court of competent jurisdiction, BellSouth appears to have no objection to resolving disputes in this manner.

**SUPRA:** Supra notes that in the prior agreement between the parties, BellSouth agreed to submit to commercial arbitration. Many of issues involved in these agreements are technical in nature and often best resolved before technically knowledgeable arbitrators. More issues are arising as Supra Telecom increases its presence in the market which will need to be resolved quickly. These issues will be more business oriented and less policy

oriented, and thus, more appropriately handled by commercial arbitrators. The parties should continue to have the right to resolve operational issues in a commercial forum on an expedited basis; thereby, limiting the customer-affecting impact of any such disputes. Accordingly, Supra Telecom believes BellSouth should be required to submit to Alternative Dispute Resolution. Alternatively, Supra Telecom believes that either party should be permitted to bring their disputes before any Court of competent jurisdiction, particularly when any issue exists as to damages. Moreover, Supra Telecom also believes that requiring the parties to engage in informal dispute resolution (i.e. through mediation or an escalation process as exists in the parties' current Interconnection Agreement), should be required in order to ensure that the parties have first sought to resolve their dispute before proceeding to litigation. —

**Issue 2: What is the scope of the ability to use the other party's Confidential Information that is obtained pursuant to this Interconnection Agreement?**

**BELLSOUTH:** Confidential Information provided under this Agreement should be utilized only in connection with this Agreement. To the extent the same or similar Confidential Information is to be exchanged under a separate agreement, that separate agreement will control.

**SUPRA:** Supra Telecom is partially in agreement with BellSouth in this regard, except that Supra Telecom states that during the effective time period of the agreement, it should not be obligated to return Confidential Information to BellSouth, if that Confidential Information is needed to implement another agreement between the parties or if that information is needed to continue to provide service to Supra Telecom's customers. Certainly such Confidential Information can be returned after the agreement has ended (unless required by a successor agreement).

**Issue 3: What is the appropriate amount of general liability insurance coverage for the Parties to maintain under their Interconnection Agreement?**

**BELLSOUTH:** \$10,000,000 is an appropriate level of coverage given the value of BellSouth's and other ALEC's network equipment and facilities, both inside and outside the central offices. In the event that any error on the part of an ALEC or BellSouth damages equipment or other property of other carriers, the loss could be substantial. Other ALECs have agreed to this level of coverage.

**SUPRA:** BellSouth has provided no facts or damage history to support this level of coverage. Under the circumstances, \$1,000,000 worth of liability coverage is sufficient; particularly since BellSouth probably already has that level (or greater) of coverage in the event of a loss (thus causing ALECs to incur unnecessary insurance expense). If BellSouth does not already have \$10,000,000 in coverage, then it obviously does not

believe that such coverage is necessary. If BellSouth has that level of coverage, then requiring ALECs to also maintain that coverage is an unnecessary expense.

**Issue 4:** Should the Interconnection Agreement contain language to the effect that it will not be filed with the Florida Public Service Commission for approval prior to an ALEC obtaining ALEC certification from the Florida Public Service Commission?

BELLSOUTH: Yes. The Florida Public Service Commission has agreed with BellSouth that "BellSouth's caution in deciding to hold filings for non-certificated entities until they obtain certification is appropriate." (Letter dated April 25 2000, from Walter O'Haeseleer, Director, Division of Telecommunications, to Nancy Sims of BellSouth) Language requiring certification prior to filing of the Agreement is appropriate given that any ALEC, whether or not certified, may adopt this Agreement.

SUPRA: No. Supra Telecom believes that since it is already certified in Florida, this language is unnecessary and should not be in the Agreement. Supra Telecom also believes that any alternative local exchange carrier (whether certified or not certified) has the right to adopt any interconnection agreement and may conduct test operations under that agreement so long as that carrier is not providing telecommunications services to the public. This position is consistent with both federal law and Fla.Stat. § 364.33. Nevertheless, alternatively, language should be provided which states that BellSouth will perform under the agreement, regardless of whether or not the carrier is certified so long as the non-certificated carrier is not providing telecommunications services to the public.

**Issue 5:** Should BellSouth be required to provide to Supra a download of all BellSouth's Customer Service Records ("CSRs")?

BELLSOUTH: No. BellSouth provides access to CSR information via its electronic interfaces, provided that the ALEC has submitted a blanket letter of authorization stating that it will view only, those CSRs for which the customer has consented to allow the ALEC access. Providing Supra with a download of all CSRs, without authorization from each and every customer, would constitute a violation of Section 222 of the Act.

SUPRA: Yes. At a minimum, Supra Telecom should have a download of CSR's for those areas in which Supra Telecom is actively marketing its services. To date, Supra Telecom has had horrifying problems with BellSouth's pre-ordering and ordering interfaces provided to ALECs. When those interfaces are working, they are slow, thus causing customers to wait an unnecessary period of time for their records to be accessed. In the last several months, every week or two, BellSouth's pre-ordering interfaces have either had problems or have been completely down for as much as several days at a time. Whether by accident or on purpose, Supra Telecom has had unreliable access to CSRs. There is no reason why Supra Telecom cannot have the data available in its computer

system, and agree not to access any particular record until permission has been given by the particular customer. The CPNI rules and Section 222 are not violated by such an arrangement.

**Issue 6:** Should BellSouth be required to provide to Supra a download of BellSouth's Regional Street Address Guide ("RSAG") Database?

**BELLSOUTH:** No. BellSouth provides access to RSAG data via its electronic interfaces. Hundreds of ALECs successfully utilize BellSouth's existing process to access RSAG. Thus, BellSouth is meeting its obligations under the Act. Notwithstanding the foregoing, BellSouth is willing to negotiate a license agreement outside of this Interconnection Agreement containing rates, terms and conditions for such a download.

**SUPRA:** Yes. Supra Telecom believes a download of RSAG is necessary to allow Supra to populate its orders in a timely manner. Moreover, Supra Telecom states that BellSouth's interfaces for ALECs are inconsistent and full of problems; and based upon the admissions of BellSouth's own management are intended to handle a very small and limited number of orders. BellSouth's interfaces are completely inadequate for any ALEC attempting to convert more than a handful of customers a day. Moreover, the information available in RSAG is not made fully available to ALECs through the existing interfaces. Supra Telecom does not see a reason for having a separate agreement to obtain access to RSAG.

**Issues 7 & 8:** Should Supra be required to pay the end user line charges requested by BellSouth?

**BELLSOUTH:** Yes. This charge is necessary where BellSouth provides switching (as an unbundled network element, in the UNE platform combination or in connection with resold service) to recover the costs of implementing local number portability. Recovery of such charges is expressly permitted under 47 C.F.R. § 52.33. Moreover, C.F.R. § 51.617(a) clearly states that ILECs shall assess the end user common line charge upon resellers.

**SUPRA:** Supra Telecom should only be required to pay charges authorized by the FCC. In general, end-user common line charges are a subsidy intended for the facilities-based carrier paying for the network (i.e. the ILEC in the resale mode and the ALEC in the UNE mode). Supra Telecom does not agree that these charges are to be assessed in all of the circumstances sought by BellSouth.

**Issue 9:** What should be the definition of "ALEC"?

BELLSOUTH: Consistent with § 364.02, Florida Statutes, "ALEC" should be defined as a telephone company certified by the Public Service Commission to provide local exchange services in the state of Florida after July 1, 1995.

SUPRA: Supra Telecom does not dispute that the definition of "ALEC" should be consistent with Fla.Stat. § 364.02. However, BellSouth should not be allowed to refuse to comply with an Interconnection Agreement simply because the carrier is not certificated. Consistent with both federal law and Fla.Stat. § 364.33, a non-certificated carrier should be allowed to engage in a test implementation of the Interconnection Agreement so long as the carrier is not providing telecommunications services to the public.

**Issue 10: Should the rate for a loop be reduced when the loop utilizes Digitally Added Main Line (DAML) equipment?**

BELLSOUTH: No. BellSouth utilizes DAML equipment on a very limited basis to expand a single loop to derive two digital channels, each of which may be used to provide voice grade service. BellSouth's deployment of DAML is limited to those situations where loop facilities are not currently available for the second voice grade loop. It is a temporary solution for provision of service pending installation of facilities. The use of DAML equipment is a means to meet in a timely manner a request for service. It is not a more economic means of meeting demand on a broad basis than using individual loop pairs. For example, for loops served via Digital Loop Carrier (DLC) equipment, DAML equipment must be placed both at the DLC Remote Terminal and the customer's premises. Further, from the DLC Remote Terminal to the BellSouth central office, two channels at DS-O (one for each of the loops derived via DAML equipment) must still be provisioned. Supra believes that loops utilizing DAML equipment should be offered at a lower cost than other loops. However, costs for unbundled loops have been calculated in compliance with Federal Communications Commission rules on a forward-looking basis without regard to the manner in which the customer is served (e.g., copper or digital loop carrier).

SUPRA: DAML is a line-sharing technology. Where line-sharing technology is involved in the UNE environment, Supra Telecom should only be obligated to pay the pro-rated cost of the shared network elements; such as the shared local loop.

**Issue 11: Should the Interconnection Agreement allow either party (first party) to offset from the other party (second party) disputed charges and other amounts due to the first party, from sums due to the second party?**

BELLSOUTH: No. The Interconnection Agreement contains in Attachment 6 provisions to handle billing disputes between the parties. Allowing one party to

withhold payment of appropriately billed charges when other charges, whether appropriately or inappropriately billed, are in dispute, - would allow parties to "game" the billing system to avoid paying bills.

SUPRA: Yes. Either party should be allowed to offset monies due to that party which the other party refuses or delays in paying. This is standard practice in the business world and encourages the parties to resolve their disputes quickly. Under BellSouth's approach, BellSouth can refuse to pay charges due to an ALEC (such as for reciprocal compensation in the UNE environment) or refuse to refund past overcharges which were already paid and force the ALEC to resort to the courts for payment; while in the interim requiring the ALEC to continue paying all charges assessed by BellSouth or lose service. The end result of this game is drain ALECs of cash flow in an attempt to make the ALEC unprofitable and force the ALEC out of business. Offsets are the norm in the business world, and forcing BellSouth to behave like a normal business is imperative if this Commission wants competition in the local exchange markets.

**Issue 12:** Should BellSouth be required to provide transport to Supra Telecom if that transport crosses LATA boundaries?

BELLSOUTH: No. BellSouth is prohibited by law from providing services across LATA boundaries. In addition, BellSouth's obligations under Section 251 and 252 of the Act relate to local interconnection and provision of services to allow ALECs to compete in the local exchange market. Supra's request is clearly beyond the scope of the Act.

SUPRA: Yes. BellSouth is obligated provide Supra Telecom access to transport throughout its network, regardless of the path or route of that transport. BellSouth has facilities to provide transport across LATA boundaries and everyday provides service across LATA boundaries to those customers located at or near the LATA boundary. The UNE connections for transport across LATA boundaries already exist, BellSouth just simply refuses to provide access to these UNEs because of the competitive implications. The law currently prohibits BellSouth from providing unrestricted service across LATA boundaries as an incentive for BellSouth to open its markets to local competition. If BellSouth can demonstrate that it has sufficiently opened its markets to competition, then BellSouth will be allowed to provide that unrestricted service. However, nothing in the law prevents Supra Telecom from offering unrestricted services across LATA boundaries and if Supra Telecom is providing service across LATA boundaries using UNE's, it is Supra Telecom who is providing that service and not BellSouth. Therefore, a refusal by BellSouth to allow Supra Telecom access to the transport UNE across LATA boundaries is simply an illegal refusal to allow Supra Telecom access to BellSouth's network.

**Issue 13:** What should be the appropriate definition of "local traffic" for purposes of the parties' reciprocal compensation obligations under Section 251(b)(5) of the 1996 Act?

BELLSOUTH: "Local traffic" should be defined to apply only to traffic that originates and terminates within a local area. The definition should expressly exclude traffic to Internet Service Providers, which is interstate traffic.

SUPRA: "Local traffic" is traffic between two locations within the local area or LATA. Thus telephone calls which are dialed within the LATA are local in nature, irrespective of whether or not any of the calls are to Internet Service Providers.

**Issue 14:** Should BellSouth pay reciprocal compensation to Supra Telecom where Supra Telecom is utilizing UNEs to provide local service (i.e. unbundled switching and the unbundled local loop) for the termination of local traffic to Supra's end users?

BELLSOUTH: No. The purpose of reciprocal compensation is to recover the costs incurred by the terminating carrier for utilizing its network. Since BellSouth does not charge Supra the end office switching rates when a BellSouth customer places a local call to a Supra customer, and Supra does not have its own network, Supra incurs no cost in terminating the call. Thus, reciprocal compensation is not appropriate.

SUPRA: Yes. When Supra Telecom is providing service through a combination of UNEs, Supra Telecom is considered to be the facilities-based local exchange carrier. The rationale for reciprocal compensation is to provide a carrier compensation for use of that carrier's network in order to complete a call and thus share on a pro-rata basis the cost of the network. The cost of UNEs to Supra Telecom is based upon the total element cost to BellSouth, thus Supra Telecom is paying on a recurring basis, for the total cost the network elements. Since Supra Telecom is paying the total cost of the UNEs, it makes sense that BellSouth should pay Supra Telecom reciprocal compensation for termination of local traffic to Supra Telecom's end-users. Additionally, the Telecommunication Act requires BellSouth to pay reciprocal compensation in the UNE environment.

**Issue 15:** What Performance Measurements should be included in the Interconnection Agreement?

BELLSOUTH: The Service Performance Measurements and Enforcement Mechanisms proposed by BellSouth should be adopted. BellSouth has provided extensive service quality measurements pursuant to which Supra can confirm parity between BellSouth and other ALECs. BellSouth's proposal includes voluntary enforcement mechanisms, which would become effective after BellSouth receives 271



authority.

SUPRA: Irrespective of BellSouth receiving § 271 approval, BellSouth is obligated to provide Supra Telecom the same or better service than it provides to its retail division and BellSouth customers. Supra has requested the performance measurements set forth in the prior agreement between the parties which has previously been filed and approved by this Commission. The performance measurements in the prior agreement have practical standards which directly relate to how quickly BellSouth must provision service to Supra Telecom customers. BellSouth is currently in constant breach of those performance standards. Requiring BellSouth to adhere to voluntary standards is simply meaningless. Standards must be binding and Supra Telecom must have the right to inspect BellSouth records regarding the service it provides to itself and BellSouth customers. For Supra Telecom to ensure its customers receive service equal in quality to that received by BellSouth customers, BellSouth must establish that it offers non-discriminatory support for total service resale, use of unbundled network elements (UNE's), and access to OSS. If there is to be a different set of standards, then BellSouth should be required to provide an effective performance measurement methodology that contains:

- (a) A comprehensive set of comparative measurements that provides for desegregation of its data to permit meaningful comparisons and full disclosure;
- (b) Business rules and calculations which reveal true performance and customer experiences;
- (c) A sound methodology for establishing benchmarks and designating appropriate retail analogs.
- (d) Statistical procedures that balance the possibility of concluding BellSouth favoritism exists when it does not with concluding there is no BellSouth favoritism when there is.
- (e) Supra Telecom's access to all the raw data that BellSouth uses for its ALEC performance reporting. Further BellSouth should adopt an appropriate systems of self-enforcing consequences to assure that the competitive local telecommunications markets envisioned by the 1996 Act will be able to develop and survive. The consequences must provide BellSouth with incentives sufficient to prevent BellSouth from inhibiting competition through discriminatory treatment of ALECs. Such consequences must be immediately imposed upon a demonstration of poor BellSouth performance. A self-enforcing system of consequences is needed to assure that BellSouth has appropriate incentives to comply, on an ongoing basis, with its Section 251 obligations to provide ALECs with non-discriminatory support regardless of whether a section 271 application has been made or approved. Supra Telecom proposes the AT&T Performance Incentive Plan (as identified in the arbitration between those two parties) as the enforcement mechanism.

11. With respect to the allegations in paragraph 11, Supra Telecom states as